

Shapiro, DiCaro & Barak, LLC  
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Hearing Date: September 11, 2012 at 10:00 am  
Objection Deadline: September 4, 2012

*Attorneys for PHH Mortgage Corporation*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_ x  
In re:

RESIDENTIAL CAPITAL, LLC, *et al.*

Debtors.

Chapter 11

Case No. 12-12020 (MG)

(Jointly Administered)

\_\_\_\_\_ x  
Case No. 12-12031

**NOTICE OF MOTION SEEKING AN ORDER GRANTING RELIEF  
FROM THE AUTOMATIC STAY PURSUANT  
TO 11 U.S.C. § 362(a) AND FEDERAL BANKRUPTCY RULE 4001**

**PLEASE TAKE NOTICE** that PHH Mortgage Corporation ("Movant") seeks relief from the automatic stay as to the property located at 68 Hammock Lane, Staten Island, New York (the "Premises") and will move before the Honorable Martin Glenn, United States Bankruptcy Judge in the Courtroom located at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004 on September 11, 2012 at 10 a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001 and 11 U.S.C 105(a) and 362(d) Movant, its agents Successors and/or assigns, seek relief from the automatic stay as to Movant's interest in real property known as 68 Hammock Lane, Staten Island, New York; and

2. Waiving the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and
3. Granting Movant such other and further relief as it just and proper.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the relief herein requested shall be in writing, shall state with particularity the grounds for the objection, shall be filed with the Clerk of the Bankruptcy Court and served upon, the undersigned counsel for the Movant seven (7) days prior to the return date and upon any other person whose interests would be affected if the objection is sustained

Dated: August 9, 2012



Shapiro, DiCaro & Barak, LLC  
By: Shari S. Barak  
Attorneys for PHH Mortgage Corporation  
105 Maxess Road, Suite N109  
Melville, NY 11747  
(631)844-9611

TO: See attached Service list

Shapiro, DiCaro & Barak, LLC  
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**AFFIRMATION IN SUPPORT GRANTING RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)**

PHH Mortgage Corporation by and through its attorneys, Shapiro, DiCaro & Barak, LLC, is seeking an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) nunc pro tunc as of May 14, 2012, and in support thereof, states as follows:

Shari S. Barak, Esq. an attorney at law duly admitted to practice law before this Court and the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

**I. RELIEF REQUESTED**

1. This is a contested matter brought pursuant to the Federal Rules of Bankruptcy Procedure Rules 4001 and Section 362(d) of Title 11 of the United States Code (the "Bankruptcy Code"), for an Order: (i) pursuant to Bankruptcy Rule 4001 and 362(d) seeking relief from the

Automatic Stay as to real property known as 68 Hammock Lane, Staten Island, New York (the "Premises"), (ii) waiving the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and (iii) granting Movant such other and further relief as is just and proper under the circumstances of this case.

## II. JURISDICTION

2. The Bankruptcy court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Bankruptcy court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 (b).

## III. BACKGROUND

3. GMAC Mortgage USA Corporation filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on or about May 14, 2012. On May 14, 2012 an Order Directing Joint Administration of the Chapter 11 case of Residential Capital with 12-12031 was issued by this Court.

4. PHH Mortgage Corporation is the Movant of a Note executed to New York Community Bank by Salvatore Mattioli and Karheem M. Mattioli on March 6, 2003 and granting a Mortgage to New York Community Bank a security interest in the property commonly known as 68 Hammock Lane, Staten Island, New York. Said Mortgage was assigned to Cendant Mortgage Corporation by assignment dated May 29, 2004. Cendant Mortgage Corporation is now known as PHH Mortgage Corporation by virtue of a merger. Copies of the recorded Mortgage, Assignment, Bond/Note and Merger documents are annexed hereto as Exhibit "A".

5. The mortgage held by Movant is in default under the Note and Mortgage for the installment due on October 1, 2010 and all subsequent monthly installments.

6. Movant commenced an action to foreclose its mortgage by filing a summons and complaint on March 11, 2011.

7. A foreclosure title search indicated that there is a second mortgage on the Property foreclosed held by GMAC Mortgage Corporation d/b/a Ditech.com. A copy of the foreclosure search describing the second mortgage is annexed hereto as Exhibit "B".

8. As of May 24, 2012, the payoff balance on the first mortgage held by Movant was approximately \$245,799.48.

9. According to the BPO which is annexed hereto as Exhibit "C" the fair market value of the Property is \$326,000.00.

10. Upon information and belief, Movant's claim against the Property exceeds the value of the property and, therefore, Debtor has little to no equity in the Property.

11. Upon information and belief, Debtor's subordinate mortgage adds little or no value to the bankruptcy estate and, therefore, the Property is not necessary or the reorganization of the Debtor.

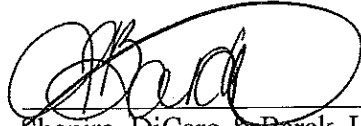
12. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. § 362 to allow PHH Mortgage Corporation to maintain a foreclosure action on its mortgage. It is further requested that this Court waive the fourteen (14) day stay invoked pursuant to F.R.B.P. 4001 (a)(3) so Movant may immediately commence and /or resume the foreclosure proceedings.

13. Movant further requests that the relief from the automatic stay be retroactive to a date prior to the commencement of its foreclosure action. Movant submits that there will be no prejudice to the Debtor if nunc pro tunc relief is granted by the Court.

WHEREFORE, PHH Mortgage Corporation respectfully requests that an Order be granted vacating the automatic stay as to nunc pro tunc as of May 14<sup>th</sup>, 2012 so as to permit the

commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, waiving the fourteen (14) day stay pursuant to F. R. B. P. 4001(a)(3); and for such other and further relief as the Court may deem just and proper.

Dated: August 9, 2012

A handwritten signature in black ink, appearing to read 'S. Barak', is written over a horizontal line.

Shapiro, DiCaro & Barak, LLC

By: Shari S. Barak

Attorneys for PHH Mortgage Corporation

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